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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 326

HUMBLE OIL & REFINING COMPANY, *et al.*,

Appellants,

vs.

RAYMOND F. MALE, Commissioner, Department of Labor and Industry, State of New Jersey,

Appellee.

On Appeal from the Supreme Court of New Jersey

MOTION TO DISMISS WITH BRIEF AND APPENDIX IN SUPPORT THEREOF

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IN THE

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HUMBLE OIL REFINING COMPANY, *et als.*,

Appellants.

v.

RAYMOND F. MALE, Commissioner, Department of Labor and Industry, State of New Jersey,

Appellee.

On Appeal from the Supreme Court of New Jersey

Motion to Dismiss

Pursuant to Rule 16(1)(b) of this Court, appellee, by the Attorney General of New Jersey, moves to dismiss on the grounds that this appeal does not present a substantial Federal question and the judgment below rests upon adequate non-Federal grounds.

Opinions Below

The *per curiam* opinion of the Supreme Court of New Jersey, affirming for the reasons expressed in the opinion of Judge Conford in the Appellate Division, is reported at 39 N. J. 355, 188 A. 2d 599 (1963). The opinion of the Appellate Division, Superior Court of New Jersey, is reported at 75 N. J. Super. 455, 183 A. 2d 454 (App. Div. 1962). Both opinions are contained in the appendix to appellants' jurisdictional statement (referred to herein as "App."). An earlier opinion of the Appellate Division, permitting the taking of testimony before an administrative officer, is reported at 54 N. J. Super. 260, 148 A. 2d 728 (App. Div. 1959).

Jurisdiction

The purported jurisdictional basis for this appeal is 28 U. S. C. § 1257(2) in that the court below declared state regulations valid against appellants' contention that the regulations are repugnant to the Federal Constitution.

BRIEF IN SUPPORT OF MOTION

Questions Presented

1. Whether a substantial Federal question is raised by appellants' contention that New Jersey statutes contain inadequate standards to guide the Commissioner of Labor and Industry in his promulgation of regulations dealing with reports of industrial accidents and occupational diseases.

2. Whether a substantial Federal question is raised by the failure of the court below to determine what penalty might be invoked against appellants if they fail to comply with the State regulations in question, where none of appellants have been charged as yet with any violation.

3. Whether the judgment below rests upon adequate non-Federal grounds, namely, (a) the regulations were promulgated in accordance with State legislative authority delegated to the Commissioner of Labor and Industry and (b) the taking of evidence for use in the declaratory judgment action was limited in scope in accordance with New Jersey Rules of Court.

Statement of the Case

This is an appeal from a judgment of the highest court of New Jersey which upheld certain regulations of the Commissioner of Labor and Industry of the State of New Jersey (hereinafter referred to as "Commissioner") promulgated on July 25, 1958, to become effective October 1, 1958. The regulations were adopted after considerable study and conferences with representatives of industry, employer and insurance groups. This history is traced in

the opinion of the Appellate Division, App. 3a to 4a. The regulations govern reports of industrial accidents and occupational diseases filed by employers and insurance companies. The principal changes in New Jersey law brought about by the regulations were (1) the requirement that self-insured employers file early initial reports of certain industrial accidents in addition to reports previously required of them by statute, and (2) the requirement that both insured and self-insured employers regularly furnish certain medical information and diagnoses to the Division of Workmen's Compensation and to injured employees, or to an employee's own physician if the employer's doctor recommends that the employee should not receive such medical information.

The changes made by the regulations will be described more carefully. By statute, R.S. 34:15-96 (App. 4a to 5a) *insured* employers must file a first report "upon the happening of any accident or the occurrence of any compensable occupational disease." However, *self-insured* employers have been required by statute, R.S. 34:15-97 (App. 5a to 6a) to file a first report immediately upon learning of accidents "causing any permanent injury" and of accidents or compensable occupational disease causing a disability extending beyond the "waiting period." The "waiting period" is defined by R.S. 34:15-14 as a period of seven days of disability following an accident, whether the days are consecutive or not. Thus, since 1924, when said statutory provisions were enacted, insured employers filed initial reports of all accidents immediately after the accidents, but self-insured employers were required to file initial reports immediately for only those accidents causing permanent disability and were not required to report other accidents or occupational diseases unless the employee was disabled for more than seven days.

Under the challenged regulations adopted by the Commissioner of Labor and Industry, both insured and self-insured employers are now required to file a first report no later than the start of the second work day after certain accidental injuries. These are injuries which cause a loss of time from regular duties beyond the working day or shift upon which the accident occurred, or which require medical treatment beyond ordinary first-aid. The report is also required on the occurrence of an occupational disease, whether or not time is lost. In case of a fatal or serious injury, an injury that requires hospitalization, the report must be made immediately. This report, known as Form L&I-1, is mailed to the Department of Labor and Industry, Bureau of Engineering and Safety.

As for furnishing medical information, the regulations require that the final report of accident contain detailed X-ray findings and a detailed diagnosis of the nature and extent of injuries. This information is omitted from the employee's copy of the final report and the employee is advised that a physician of the employee's choice may obtain this information upon request. The final report also requires a statement of "general X-ray findings" and a "general diagnosis". However, this information need not be furnished to the employee if the treating physician recommends that the employee should not have this information, "because of the adverse effect that knowledge of the answers may have on the employee." A copy of Form L&I-1 is included in the appendix annexed hereto.

R.S. 34:15-100 has been in effect since 1924 and, therefore, without the new regulations, medical information was required to be produced in the following terms:

> "As a part of the necessary medical service required by the compensation law, the employer or insurance carrier shall, when directed so to do, file with the work-

men's compensation bureau* copies of such medical certificates or reports as it may have on file." R.S. 34:15-100.

The action below was commenced by appellants** by the filing of a petition for declaratory judgment in the Appellate Division of the Superior Court of New Jersey on October 3, 1958.*** On October 3, 1958 appellants filed an amended petition for declaratory judgment, which is set forth in the appendix annexed hereto. Appellants are self-insurers, that is, self-insured employers, corporations engaged in business in New Jersey who carry their own workmen's compensation liability insurance. Paragraph 1 of their amended petition for declaratory judgment recites that appellants "are all subject to the applicable provi-

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* Since the reorganization of the Executive Branch of Government in New Jersey following the adoption of the 1947 Constitution of New Jersey, the Workmen's Compensation Bureau has been known as the Division of Workmen's Compensation, in the Department of Labor and Industry. N.J.S.A. 34:1A-5.

** The following self-insured corporations were parties-plaintiff and appellants in the proceedings below in the New Jersey appellate courts but apparently have dropped out of the case and have not joined in the appeal to this Court:

(1) Johns-Manville Products Corporation, (2) General Motors Corporation, (3) Samuel Hird & Sons, Inc., (4) National Biscuit Corporation, (5) Sears, Roebuck and Co., (6) The International Nickel Company, Inc., (7) Ford Motor Co.

*** Under The Revision of the Rules Governing the Courts of the State of New Jersey, the procedure for reviewing the validity of any administrative rule promulgated by a State administrative agency is by petition for a declaratory judgment addressed to the Appellate Division. R.R. 4:88-10. The procedure applicable to such actions conforms with the procedure governing appeals from the trial divisions to the Appellate Division of the Superior Court of New Jersey. R.R. 4:88-10.

sions of Title 34 of the New Jersey statutes, entitled Labor and Workmen's Compensation, R.S. 34:1-1, *et seq.*"*

The detailed allegations of appellants' amended petition for declaratory judgment attacked the regulations principally because they were said to conflict with the provisions of various New Jersey statutes. The assertions of unconstitutionality were expressed in vague, general terms, in paragraphs 12 and 13, as follows:

> "12. Plaintiffs further allege that said amendments are arbitrary, unreasonable, capricious, discriminatory and oppressive and are therefore illegal and void and contrary to the provisions of the constitutions of the United States and of the State of New Jersey.
>
> "13. Plaintiffs further allege that to the extent Title 34 of the Revised Statutes of the State of New Jersey permits the valid promulgation of said amendments, said statutes are contrary to the provisions of the constitutions of the United States and of the State of New Jersey."

---

* Separate petitions for declaratory judgment were also filed, on October 9, 1958, by New Jersey Manufacturers Casualty Insurance Company, a company engaged in the business of writing workmen's compensation insurance in the State of New Jersey and, on October 23, 1958, by Mitchell-Bissell Company, a company that is engaged in the manufacturing business in New Jersey and is an insured employer subject to the Labor and Workmen's Compensation laws of the State of New Jersey. The said insurance company and insured employer complained primarily of the regulations insofar as they required the submission of medical information and diagnoses to the Division of Workmen's Compensation and to injured employees. The regulations requiring the additional early report of accidents of self-insured employers did not apply to these two plaintiffs, since insured employers had always filed an early report of accident prior to the new regulations. No appeal has been taken to this Court by the said New Jersey Manufacturers Casualty Insurance Company or Mitchell-Bissell Company.

Appellants sought and obtained a stay of the regulations pending determination of their action. 54 N. J. Super. at 265.

Upon application of appellants for leave to supplement the record with additional evidence on the issues in the case pursuant to R.R. 4:88-11, the Appellate Division ordered that testimony be taken before the agency head or his designee on *specific* subjects relating to the legality and reasonableness of the regulations. 54 N. J. Super. at 272.

Hearings were held between December 15, 1959 and February 26, 1960, and then the matter was resubmitted to the Appellate Division for consideration on the merits. Amazingly, the printed record on the appeal following the hearing comprised approximately 3,000 pages. However, the principal contentions of appellants remained the same and did not depend significantly upon the evidence adduced at the hearings. Appellants' principal contentions before and after the hearings were that the regulations were in conflict with existing statutes governing reports of self-insured employers and that the Commissioner exceeded his delegated authority in the promulgation of the regulations. *See*: App. 14a, where the Appellate Division said:

> "Plaintiffs' major reliance for their thesis of illegality of the timing of the L&I-1 form in respect of self-insured employers, as noted, is that the Accident Reporting Act constitutes a specific regulation on the subject by the Legislature, preempting the field to the exclusion of jurisdiction thereof by the Commissioner through rules and regulations."

The requirement that medical information be furnished was attacked as beyond the statutory authority of the Commissioner and as unreasonable, burdensome and inconvenient to the reporting employers as well as harmful to the

interests of the injured employees. As to these contentions the Appellate Division held that the Commissioner did have the statutory authority to require the submission of such medical data and further said, "We find no arbitrariness, but, on the contrary, a good deal of rational justification for this aspect of the challenged regulations." (App. 22a, 23a.)

The Appellate Division upheld the regulations in all respects and appellants appealed to the Supreme Court of New Jersey. Appellee herein moved to dismiss said appeal on the grounds that a substantial constitutional question was not raised and, therefore, under New Jersey Rules of Court an appeal as of right could not be taken to the New Jersey Supreme Court. The Supreme Court of New Jersey reserved decision on the motion to dismiss. After oral argument on the merits of the appeal, the New Jersey Supreme Court affirmed *per curiam* on the opinion below. Appellants filed a petition for rehearing with the Supreme Court of New Jersey, but this petition was denied and the order staying the effectiveness of the regulations was also dissolved by the Court.

It is interesting to note the absence of a Federal question in appellants' description of the principal constitutional problems set out in their brief before the Supreme Court of New Jersey. At pages 19 and 20 of appellants' brief in that Court, appellants contended:

> "The prime constitutional problem here at issue can concededly be resolved by answers to the following questions:
>
> 1. Did the legislature intend to vest authority in the Commissioner of Labor and Industry to require accident reports from all employers regardless of insurance status and from all insurance carriers, in all

cases where time was lost beyond the shift or where medical treatment beyond ordinary first aid was required or in the case of any occupational disease?

2. If this intent accords with constitutional principles, is it accomplished by legally adequate standards to guide and limit the administrator?

3. Did the administrator confine his activity to the delegated power and within these standards?

If the answer to any one of the foregoing queries is in the negative, the defendant's action is constitutionally offensive."

Our present motion to dismiss is based upon the contention that there are no substantial Federal constitutional issues presented by this appeal and that the judgment below is adequately based upon independent non-Federal grounds.

Statutes and Regulations Involved

This action challenges the validity of regulations promulgated by the Commissioner of Labor and Industry dealing with the reporting of industrial accidents and occupational diseases. The statutes relied upon by the New Jersey courts in upholding the validity of the regulations are:

R.S. 34:1-20, which provides that the Commissioner may make rules and regulations as he deems necessary to enforce the provisions of Title 34, dealing with Labor and Workmen's Compensation laws.

N.J.S.A. 34:1A-3, which, after the reorganization of the Executive Branch of the New Jersey Government following the adoption of the 1947 Constitution of New Jersey, confirms the power in the Commissioner, as head of the Department of Labor and Industry, to adopt regulations

"as may be authorized by law" and as may be necessary "for the efficient conduct of the work and general administration of the department * * *."

R.S. 34:1-9, which authorizes the Commissioner to utilize one bureau to assist in the work of another bureau in his department so as "to facilitate the economical and efficient performance of its work * * *."

R.S. 34:1-19, which requires the Commissioner to report annually to the Governor on "the work of the department."

R.S. 34:15-50, which deals with the responsibility of the Division of Workmen's Compensation to supervise and "endeavor to bring about a settlement" of pending workmen's compensation claims.

R.S. 34:15-15, which requires an employer to furnish medical treatment for an injured workman and permits an employee to secure such treatment if the employer refuses or neglects to furnish medical care.

R.S. 34:15-100, which requires that, "As part of the necessary medical service required by the compensation law, the employer or insurance carrier shall, when directed so to do, file with the workmen's compensation bureau copies of such medical certificates or reports as it may have on file."

ARGUMENT

POINT I

No substantial Federal question is raised by this appeal and the judgment below rests upon adequate non-Federal grounds.

A. A Federal question is not presented by appellants' contention that the regulations of the State Commissioner were promulgated without a valid delegation of legislative authority by a state officer acting under state statutes lacking in adequate standards.

Appellants claim that a substantial Federal constitutional question is raised by their contention that the New Jersey statutes did not contain adequate standards to govern the promulgation of the regulations in question. To support this contention appellants cite *Panama Refining Co.* v. *Ryan*, 293 U. S. 388 (1935) and *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495 (1935). But both of these cases dealt with the delegation of legislative power on the *Federal* level. In neither case were state action or state statutes involved.

In the *Panama Refining* case, *supra*, the court dealt with an executive order of the President of the United States prohibiting the transportation of petroleum in interstate commerce in excess of amounts permitted by state law or regulation to be produced or withdrawn from storage. The executive order was based upon the National Industrial Recovery Act of 1933. This Court held that said Act did not lay down a legislative policy and did not establish adequate standards to control executive action. The court held that this was in violation of the Federal Constitution insofar as it vests the legislative power of the United States in Congress. The court held that while Congress could not

transfer its duties to or authorize the exercise of its powers by an administrative officer, the fulfillment of a legislative program could be left to an administrative officer, with the power to promulgate detailed regulations, providing Congress adequately expresses its policy and standards for such action. A similar decision was reached in the *Schechter Poultry* case, where the court held the National Industrial Recovery Act unconstitutional and set aside criminal convictions for violation of the Live Poultry Code. The court held that the Code, establishing standards of fair competition for the poultry industry, was enacted pursuant to an improper delegation of legislative authority. Again, Congressional legislative authority was involved and the division of Federal governmental authority was the sole issue. A state form of government and the power of a state legislature to delegate its authority within the scope of a state constitution was not involved.

This court has repeatedly held that the delegation of legislative power to state officers and agencies is not a Federal question. *Welsh* v. *Swasey*, 214 U. S. 91 (1909); *Erie R.R. Co.* v. *Bd. of Public Utilities Commissioners of New Jersey*, 254 U. S. 394 (1921); *Ohio* v. *Akron Metropolitan Park District*, 281 U. S. 74 (1930); *Neblett* v. *Carpenter*, 305 U. S. 297 (1938); *O'Neill* v. *Leamer*, 239 U. S. 244 (1915).

The *Welsh* case, *supra*, concerned legislation enacted in Massachusetts regulating the height of buildings in the City of Boston. A commission was given authority to prescribe the height of buildings between 80 and 100 feet in one of the districts of Boston and to impose conditions concerning the erection of the buildings. No significant standards were provided to guide the action of the commission. Although it did not appear that appellant "makes the objection of illegality arising from an alleged delegation of legislative power to the commissions provided for by the statutes," this Court said:

> "At all events, it does not raise a Federal question. The state court holds that kind of legislation to be valid under the state constitution and this court will follow its determination upon that question." 214 U. S. at 104.

Ohio v. *Akron Metropolitan Park District*, *supra*, involved a statute concerning the organization and powers of park district boards. The Park District Act of Ohio was attacked as invalid and violative of the due process and equal protection clauses of the 14th Amendment of the Federal Constitution. The Act provided for the establishment of a park district by order of a probate judge of the county. The probate judge was empowered to appoint three commissioners to constitute the Board of Park Commissioners, a public agency. The Board was given condemnation power, the power of levying assessments and taxes and the power to establish rules and regulations for the operation of the parks, the violation of which constituted a misdemeanor. Taxpayers complained that the state statutory provisions involved an unconstitutional delegation of legislative power to the probate court and to the nonelective park commissioners. 281 U. S. at 79. This Court held that these contentions did not raise any substantial Federal question saying:

> "We do not consider it necessary to consider at length this objection, or the other points sought to be made against the statute under the Fourteenth Amendment, as, in view of the repeated decisions of this Court, we do not find any substantial Federal question presented." 281 U. S. at 79.

Neblett v. *Carpenter*, *supra*, involved a challenge of the powers given to the California Insurance Commissioner to rehabilitate an insurance company under the Insurance

Code of California. It appears that appellants challenged the delegation to the Commissioner of legislative functions and the scope of his acts within that delegation. This Court noted that the contentions were rejected by the California court and that this Court was without jurisdiction to review the state court's decision on these questions. 305 U. S. at 302. This Court said:

> "It is argued that the Code unconstitutionally delegates legislative functions to the Commissioner, and that the Supreme Court erred in not so holding. This, again, is a question of state law the decision of which by the State's highest court is binding upon us."

In the *Erie Railroad* case, *supra*, the railroad complained of an order of the New Jersey Board of Public Utility Commissioners requiring the railroad to eliminate certain railroad crossings at street grade in the City of Paterson. The statute gave the Board the power to enter a grade-crossing elimination order if the crossing "is dangerous". The railroad argued that the Board had exceeded its powers. Of this the court said:

> "Some argument is based upon a discretion supposed to be left to the Board by the statute, which reads that when it appears to the Board that the crossing is dangerous it may order, &c. The State Courts seem to regard the words as imposing a positive duty, but upon either construction we perceive no infraction of the company's constitutional rights. If the words are imperative the reasons that we have given apply. If they leave a discretion it is subject to review by the Courts, and this Court has no concern with the question how far legislative or *quasi*-legislative powers may be delegated to a commission or board." 254 U. S. at 412-13.

See also: *O'Neill* v. *Leamer, supra,* where this court held in 239 U. S. at 247-8 that:

> "The propriety of the delegation of authority to the District Court in the matter of the formation of the drainage district is a state question."

As noted in the Appellate Division decision (at App. 16a), the regulations under review consist "merely of procedural directives for the filing of informational reports." The court held the statutory delegation of rule-making power contained sufficient standards to guide the Commissioner's action, whether these standards be expressed or implied. The court held (at App. 18a) that the statutory provisions requiring the Division of Workmen's Compensation to protect rights of injured workers "reasonably imply a standard and policy which may be administratively implemented by procedural regulations concerning reporting of accidents * * *."

Although Federal decisions do not control the interpretation of the delegation of state legislative power, it is respectfully submitted that the decision in this case is in conformity with more recent decisions of the United States Supreme Court. *See*: *Yakus* v. *United States,* 321 U. S. 414 (1944) and *Lichter* v. *United States,* 334 U. S. 742 (1948). We note the many functions of New Jersey's Commissioner of Labor and Industry for which early reports of accidents would be useful:

> 1. The inspection of regulated establishments. R.S. 34:1-15;
>
> 2. The enforcement of laws and regulations and the investigation and study of any special problems connected with the labor and employment of women and children. R.S. 34:1-27;

3. The collection of statistical details relating to labor in the State with particular regard to the conditions of the laboring classes, which records and statistics are collected for two prime purposes: first, the permanent establishment of productive industry upon a prosperous basis both to the employer and employed; and, second, the submission of an annual report to the Legislature covering such information as may be necessary to show the true condition of industry in the State of New Jersey. R.S. 34:1-49 and R.S. 34:1-50;

4. Assisting migrant laborers in securing employment, suitable working conditions and housing. R.S. 34:1-66;

5. The regulation of potentially hazardous working conditions as are created by openings in the floor, R.S. 34:2-31; improper ventilation, R.S. 34:2-32; the presence of inflammable liquids, R.S. 34:3A-1 to 34:3A-3; and passenger elevators, R.S. 34:4-1 to 34:4-9;

6. The enforcement of safety and comfort provisions providing for the protection and betterment of the condition of workers in factories, mines and other workshops. R.S. 34:6-1, *et seq.* (The detailed protections afforded here are extremely numerous. They illustrate the great scope of activity and responsibilities of the Commissioner. Typical among these is the mine safety section which gives to the Commissioner, acting through the Bureau of Engineering and Safety, the power to "inspect, investigate, inquire and examine into the operation, workings, methods, safety devices and appliances, machinery, sanitation, ventilation, means of ingress and egress, means taken to protect the lives and insure the safety and health of miners,

together with the causes of accidents, injuries and fatalities and means taken to comply with the law. * * *" R.S. 34:6-98.3(c)); and,

7. The examination of steam boilers. R.S. 34:7-17.

As noted in the Appellate Division decision, the Commissioner is empowered to utilize any bureau in his department to assist the work of another bureau. R.S. 34:1-9. Therefore, having one accident report that could be used by many bureaus will reasonably facilitate the performance of the Commissioner's varied responsibilities under New Jersey's laws dealing with labor, industry and workmen's compensation.

B. Where a violation of the regulations has not been charged as yet, nor any penalty imposed, the failure of the court below to determine what penalty, if any, may be applied if appellants do not comply with the regulations does not present a Federal question for this Court.

Appellants' Petition for Declaratory Judgment (set forth in the Appendix hereto) did not raise the issue concerning the uncertainty of a penalty. Appellants contend in their jurisdictional statement, "The constitutional problem thus engendered was specifically raised in the Appellate Division brief," citing "Plaintiffs' Appellate Division Brief, p. 125 *et seq.*" An examination of appellants' brief in the Appellate Division does not disclose that the portion of their brief around page 125 presents the argument that the absence or uncertainty of the penalty is a violation of due process of law protected by the Federal Constitution. The argument contained in the Appellate Division brief related to the delegation of legislative power without adequate standards. At page 121 of appellants' brief in the Appellate Division *Schechter Poultry Corp.* and *Panama Refining Co.* cases, *supra*, are cited. At page

123 appellants there said, "Such rationalization is a flagrant flaunting of the constitutional limitation of the separation of powers. *Harriman* v. *I.C.C., supra.*" The argument continues on page 124, but takes a slightly different course at page 125 where *Connally* v. *General Construction Company*, 269 U. S. 385 (1926) is cited for the proposition that, "A statute which either forbids or requires *the doing of an act* in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." (Emphasis added.) The strongest presentation by appellants of their argument based upon the uncertainty of a penalty is at page 127 of its Appellate Division brief, as follows:

> "Quite obviously, the absence of specific grants of authority and the absence of specific standards in terms of which any such authority may find exercise has, as its inevitable result, non-specific and unknowable penalties as the only device of enforcement. Where, as here, the penalty is unknown and unknowable, the regulation is either unenforceable or invalid. See *Eaton* v. *United States, supra*; *Harriman* v. *I.C.C., supra.*"

Appellants contend (Jurisdictional Statement, p. 14) that in their brief before the Supreme Court of New Jersey at page 73 thereof they reiterated the "constitutional problem" raised by the uncertainty of a penalty. There, again, we see that appellants' argument centered primarily on the absence of adequate standards to guide the exercise of delegated authority. The argument again veers slightly to incorporate the rule that *conduct* must be declared unlawful with specific certainty before a person can be subjected to penalties for such conduct. But the argument returns to appellants' basic argument about standards in

the delegation of legislative authority, urging that the standards should not be found by implication. This argument is contained in Point II of appellants' brief before the New Jersey Supreme Court entitled: "Any purportedly proper delegation of authority or of the power the Commissioner asserts is void for lack of proper standards." The argument concludes at page 74 of that brief as follows:

> "This practical vice is unavoidable without the constitutional safeguard of adequate and ascertainable standards. The alchemy of implication is neither substitute nor safeguard.
>
> "*Parenthetically,* and apropos of standards, it would seem that the absence of specific standards in terms of which any such authority may find exercise has, as its inevitable result, non-specific and unknowable penalties as the only device of enforcement. Where, as here, the penalty is unknown and unknowable, the regulation is either unenforceable or invalid. See *United States* v. *Eaton,* 144 U. S. 677, 12 Sup. Ct. 764, 36 L. Ed. 591 (1892); *Harriman* v. *I.C.C.,* 211 U. S. 407, 29 Sup. Ct. 115, 53 L. Ed. 253 (1908). (Emphasis added.)
>
> " 'The modern tendency toward flexibility and liberality' must not be allowed to sanction the substitution of convenience for constitutionality. Plaintiffs look to the Court for protection."

For the first time in the proceedings below, in appellants' petition for rehearing before the Supreme Court of New Jersey appellants sought to advise that Court that its failure "to determine the issue with respect to penalty for noncompliance aggravates the inherent due process question." There appellants argued that the want of a specific penalty is a violation of due process and, "For this

Court to ignore it is for this Court to contravene the Federal Fourteenth Amendment of the Constitution of the United States." No cases were cited by appellants to support this contention. As noted above, rehearing was denied by the Supreme Court of New Jersey, without opinion.

The fact is that none of appellants have been accused of violating the regulations and no attempt has been made to impose a penalty on any of appellants. Under New Jersey law, appellants cannot prematurely raise the issue of penalties which have not been but which may be imposed for future violations of a State statute. See: *State* v. *Montelcone*, 36 N. J. 93, 100, 175 A. 2d 207, 211 (1961), which was an appeal from a conviction for violating New Jersey's Sunday Closing Law. There the Court said:

> "Defendants refer in their argument not only to the penalties particularized in N.J.S. 2A:171-5.8 but also to the provision of N.J.S. 2A:171-5.9 that 'upon any 4 convictions for violations of this act, the premises in or upon which the violation occurred shall be deemed a nuisance.'
>
> "As far as the record discloses, the instant convictions were for first offenses. The defendants, therefore, may not be held to invoke the constitutional protections against cruel and unusual punishment at this time merely by claiming that penalties which might be imposed upon them for subsequent violations, or penalties which might be imposed upon others not here involved could violate constitutional provisions."

Assuming that this issue was properly raised below, it should be presumed that the court below did not deal with the issue because it was premature under State law. Where Federal and non-Federal questions are properly raised in the State court and no opinion is delivered by the highest

State court in rendering its judgment, this Court will ordinarily presume that the decision is based upon an adequate non-Federal ground raised in the record below.* *Adams* v. *Russell*, 229 U. S. 353, 358 (1913); *Stembridge* v. *Georgia*, 343 U. S. 541, 547 (1952). In the latter case, the Court said,

> "Where the highest court of the State delivers no opinion and it appears that the judgment *might* have rested on a nonfederal ground, this Court will not take jurisdiction to review the judgment."

In any case, no Federal question is presented by appellants' "penalty argument." The rule in New Jersey that penalty arguments will not be prematurely entertained before the imposition of a penalty is also the rule of this Court. See: *Communist Party of United States* v. *Subversive Activities Control Bd.*, 367 U. S. 1, 104 (1961) and *United States* v. *Harriss*, 347 U. S. 612, 626-27 (1954). In the *Communist Party* case, *supra*, the court said:

> "As to the penalties for failure to register * * * which the Party attacks as exorbitant and oppressive,

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* In our supplemental brief before the Appellate Division, which was also before the Supreme Court of New Jersey, we contended that:

> "Whether any penalty can be imposed for the failure to file such a report and what penalty it is cannot determine the validity of the regulation in question. That is a problem for an enforcement suit that may be brought at a later time. The obligation to file the reports would exist regardless of the method in which it can be enforced. It may be that the method of enforcement would be a civil action for an injunction."

We further contended that the doubt that may exist as to the penalty for violation of the regulations may be cured by a supplemental regulation of the Commissioner, if necessary.

these are not now before us. They have not yet been imposed on the Party and may never be."

In the *Harriss* case, *supra*, it was contended that the penalty provisions included a prohibition from attempting to influence the passage of legislation for a period of three years and that such provision violated the constitutional guarantees of freedom of speech and the right to petition the Government. Again, the Court held that it was unnecessary to pass on the contentions since the penalty which was feared had not yet been applied to the appellees in that case and might not be if appellees were found innocent of the charges against them. The court here should not assume that appellants will violate the regulations.

In *U. S.* v. *Wurzbach*, 280 U. S. 396, 399 (1930) it was contended by a defendant indicted under the Federal Corrupt Practices Act that, "It is said to be uncertain which of several sections imposes the penalty and therefore uncertain what the punishment is." The Court answered this contention by saying, "That question can be raised when the punishment is to be applied."

It may also be presumed that the State's highest court refused to pass upon the penalty contention of appellants because that contention was not raised in accordance with State procedural rules. As noted above, the first time appellants argued that their Federal constitutional rights were jeopardized by the uncertainty of the penalty was in their petition for rehearing. The New Jersey Supreme Court denied their petition for rehearing without opinion. Under R.R. 1:9-4, such a petition is addressed to the discretion of the Court and will not be granted unless a justice who concurred in the judgment or decision moves it and a majority of the Court so determines. Under New Jersey law an appellate court is not bound to consider questions not raised below, even though they are constitu-

tional questions. *Roberts Electric, Inc.* v. *Foundations & Excavations, Inc.*, 5 N. J. 426, 429, 432, 75 A. 2d 858 (1950), where the court dismissed the appeal, "For want of a constitutional question properly raised * * *." See also, *Lettieri* v. *State Board of Medical Examiners*, 24 N. J. 199, 206-207, 131 A. 2d 518 (1957); and see R.R. 1:7-1(c) which requires that if the statement of questions involved includes any question not presented to the court below, "this fact shall be noted". Said Rule of Court provides: "The foregoing requirements are to be considered in the highest degree mandatory, admitting of no exception; ordinarily no point will be considered which is not set forth in or necessarily suggested by the statement of questions involved." In their briefs filed with the Appellate Division and the Supreme Court of New Jersey appellants' statement of questions involved did not raise this so-called "doubtful penalty" issue.

Appellants' petition for rehearing failed to comply with R.R. 1:7-1(c) in that it failed to indicate that appellants did not raise in the court below the argument presented in Point II of said petition, namely, that a Federal question was raised by the uncertainty of the penalty to be imposed for non-compliance with the regulations. The New Jersey Supreme Court's denial of a rehearing was therefore justified on the basis of this State procedural rule alone. In the *Stembridge* case, *supra*, this Court refused to consider an appeal from a judgment of the Supreme Court of Georgia which had failed to pass upon a Federal constitutional question "raised for the first time on the motion for rehearing in the Court of Appeals (of Georgia)." 343 U. S. at 547. This Court found that a procedural rule of the Georgia court required that constitutional questions must first be raised in the trial court and held that, "At this stage the Supreme Court of Georgia could have denied certiorari on adequate State grounds." This Court, there-

fore, declined to take jurisdiction and dismissed the case, saying that the petition for certiorari had been improvidently granted and that this Court is "without jurisdiction when a question of the existence of an adequate State ground is debatable." It is noted that in *Stembridge, supra*, no opinion was issued by the Georgia Court of Appeals in denying the motion for a rehearing, and the Supreme Court of Georgia thereafter denied certiorari without opinion.

C. The contentions of appellants regarding the hearing before the Commissioner and the use of the forms do not raise substantial Federal questions.

Appellants complain that in the administrative hearing the Commissioner refused to allow appellants to call certain subordinate employees in his department to refute testimony given by other members of the department.

As noted above, New Jersey court rules fix the procedure for an action brought directly in the Appellate Division to review a regulation of a State administrative agency. R.R. 4:88-10 and 11. R.R. 4:88-10 requires the agency to transmit to the Appellate Division a certified copy of the record of the proceedings resulting in the promulgation of the regulation being reviewed. Additional evidence may be submitted with leave of the Court pursuant to R.R. 4:88-11.

In the case at hand the Appellate Division did permit the taking of testimony to supplement the record, but limited the testimony to specific subjects. The Appellate Division permitted appellants to offer proofs solely as to:

> "(1) practical interpretation of prior rules on accident reporting by petitioners (practical interpretation through departmental practices will be afforded *not by testimony but by answers to interrogatories* or by stipulation); (2) the lack of necessity for, burdensome

> nature, and irrelevance to statutory purposes of information sought by proposed reports (departmental knowledge and data relevant to this will be afforded *not by testimony but by answers to interrogatories* or by stipulation); (3) manner of reporting by assureds under policy provisions; (4) practical difficulties and burdens of compliance of employers in various situations; (5) cost and inability of personnel to answer particular questions designated in forms." (Emphasis added) 54 N. J. Super. at 272.

Hearings were held on approximately 30 separate days, producing a printed record of over 3,000 pages, very little of which has been relied upon by appellants in their attack upon the regulations. The Appellate Division concluded that the Commissioner had liberally interpreted its order for the taking of additional testimony, saying:

> "In any case, the fairness of approach of the Commissioner in this matter is manifested not only by his liberality in interpretation of our prior order concerning the scope of the proofs to be admitted on behalf of plaintiffs, but also by his receptivity to a number of criticisms advanced by plaintiffs as reflected in the regulations as finally promulgated at the conclusion of the hearings." 75 N. J. Super. at 476, App. 19a.

Thus, the scope of the hearing was considered adequate under the State procedural law by the court that ordered the hearing. Nor is there any validity to appellants' lament that during the hearing the Commissioner refused to determine the "legal points at issue." Jurisdictional Statement, 6. This was the function of the New Jersey appellate courts. That function having been performed by the New Jersey courts, appellants cannot complain that due process was denied because an administrative officer had

earlier refused to pass upon legal issues at a hearing ordered for the limited purpose of taking evidence to supplement the record.

At pages 18 and 19 of their Jurisdictional Statement appellants also contend that their Federal due process rights are violated by the fact that they must file reports with the Department of Labor and Industry which may later be used against them in contested hearings. Not recognizing the obvious difference between a corporation like Humble Oil and Refining Company or Bethlehem Steel Company and an injured employee, they complain that it is a denial of their equal protection rights since employees are not required to file the same reports. Even more incredible is appellants' contention that the information thus supplied "might well be used at the time of the hearing without the knowledge of the employer * * *." This latter contention is entirely speculative. A judge or hearing officer *might* in any proceeding violate due process by considering evidence outside of the record without notifying the parties involved. The possibility of error or wrongdoing cannot avoid the requirement for filing accident reports which serve a proper governmental purpose. We know of no support for the proposition that reports cannot be required of a regulated industry if the reports may be used at a later date as evidence against the reporter. Records kept in the ordinary course of business are not immune from production in a legal proceeding by an adversary. Nor are such records declared confidential because an adversary has not or was not required to keep the same kind of records.

The extent to which a substantial Federal question is raised may be measured by the weakness of appellants' arguments.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the appeal be dismissed on the grounds that the appeal does not raise a substantial Federal question and the judgment of the court below rests upon adequate non-Federal grounds.

ARTHUR J. SILLS,
Attorney General of New Jersey,
Attorney for Appellee,
Raymond F. Male, Commissioner,
Department of Labor and Industry,
State of New Jersey.

Of Counsel:

THEODORE I. BOTTER
First Assistant Attorney General
and
HOWARD H. KESTIN,
Law Assistant

Dated: August 30, 1963.

APPENDIX

Amended Petition for Declaratory Judgment—Esso Standard Oil Co., Bethlehem Steel Company, *et als.*

(Filed Oct. 31, 1958)

To the Honorable Judges of the Superior Court of New Jersey, Appellate Division:

Pursuant to leave granted by order of this Court on October 17, 1958, the amended petition of Esso Standard Oil Company, a corporation of the State of Delaware, qualified to do business in New Jersey and having a place of business at 500 North Broad Street, Elizabeth, New Jersey; Bethlehem Steel Company, a corporation of the State of Pennsylvania, qualified to do business in New Jersey and having a place of business at 1301 Hudson Street, Hoboken, New Jersey; Johns-Manville Products Corporation, a corporation of the State of Delaware, qualified to do business in New Jersey and having a place of business at 200 North Main Street, Manville, New Jersey; General Motors Corporation, a corporation of the State of Delaware, qualified to do business in New Jersey and having a place of business at Edgar Road, Linden, New Jersey; Samuel Hird & Sons, Inc., a corporation of the State of New Jersey and having its principal office at 7 Jewell Street, Garfield, New Jersey; Alan Wood Steel Company, a corporation of the State of Pennsylvania, qualified to do business in New Jersey and having a place of business at Dover, New Jersey; Aluminum Company of America, a corporation of the State of Pennsylvania, qualified to do business in New Jersey and having a place

of business at Edgewater, New Jersey; American Can Company a corporation of the State of New Jersey and having its principal office at 15 Exchange Place, Jersey City, New Jersey; B. F. Goodrich Company, a corporation of the State of New York, qualified to do business in New Jersey and having a place of business at 550 Belmont Avenue, Haledon, New Jersey, the California Oil Company, a corporation of the State of Delaware, qualified to do business in New Jersey and having a place of business at 1200 State Street, Perth Amboy, New Jersey; Crucible Steel Company of America, a corporation of the State of New Jersey and having its principal office at P. O. Box 32, Harrison, New Jersey; Harris Structural Steel Company, a corporation of the State of New York, qualified to do business in New Jersey; and having a place of business at New Market, New Jersey; International Harvester Company, a corporation of the State of New Jersey and having its principal office at 51 Newark Street, Hoboken, New Jersey; National Biscuit Company, a corporation of the State of New Jersey and whose agent for service of process is Edward J. O'Mara, One Exchange Place, Jersey City, New Jersey; Raybestos-Manhattan, Inc., a corporation of the State of New Jersey and having its principal office at 61 Willett Street, Passaic, New Jersey; Sears, Roebuck and Co., a corporation of the State of New York, qualified to do business in New Jersey and having a place of business at 168 Elizabeth Avenue, Newark, New Jersey; Socony Mobil Oil Co., Inc., a corporation of the State of New York, qualified to do business in New Jersey and having a place of business at Willingsport Road, Paulsboro, New Jersey; Westinghouse Electric Corporation, a corporation of the State of Pennsylvania, qualified to do business in New Jersey and having a place of business at 95 Orange Street, Newark, New Jersey;

Amended Petition for Declaratory Judgment—Esso Standard Oil Co., Bethlehem Steel Company, et als.

American Smelting & Refining Company, a corporation of the State of New Jersey, and having its principal office at 15 Exchange Place, Jersey City, New Jersey; The International Nickel Company, Inc., a corporation of the State of Delaware, qualified to do business in New Jersey and having a place of business at The Bayonne Works, Bayonne, New Jersey, and Ford Motor Co., a corporation of the State of Delaware, qualified to do business in New Jersey and having a place of business at Mahwah, New Jersey, respectfully shows and alleges:

1. Plaintiffs are engaged in various corporate enterprises in the State of New Jersey and are all subject to the applicable provisions of Title 34 of the New Jersey statutes, entitled Labor and Workmen's Compensation, R. S. 34:1-1, *et seq.*

2. Pursuant to the provisions of R. S. 34:15-77, plaintiffs carry their own workmen's compensation liability insurance. As such self-insurers, they bring this suit on behalf of themselves and on behalf of all others in the State of New Jersey similarly situated.

3. Defendant, Carl Holderman, is the Commissioner of Labor and Industry, duly appointed as such by the Governor of the State of New Jersey, pursuant to R. S. 34:1A-2 (1958).

4. The defendant promulgated the following supplement to the present rules and regulations of the Department of Labor and Industry and the Division of Workmen's Compensation.

Amended Petition for Declaratory Judgment—Esso Standard Oil Co., Bethlehem Steel Company, et als.

(SEAL)

STATE OF NEW JERSEY
DEPARTMENT OF LABOR AND INDUSTRY
Carl Holderman, Commissioner

July 25, 1958

Please reply to writer at this address:

20 W. Front St.
Trenton, N. J.

Notice.

To: ALL WORKMEN'S COMPENSATION INSURANCE CARRIERS AUTHORIZED TO DO BUSINESS IN NEW JERSEY AND ALL WORKMEN'S COMPENSATION SELF-INSURERS

The Department of Labor and Industry and the Division of Workmen's Compensation have approved and adopted the enclosed revised forms.

I. Employer's Report of Accidental Injury—Form WC-1 (5-56)

The revised form must be filed by self-insured employers or insurance carriers to report an accidental injury which shall cause a loss of time from regular duties beyond the working day or shift, on which the accident occurred, or which shall require medical treatment beyond ordinary first aid, or more than two treatments by a physician, and for the occurrence of an occupational disease, whether or not time is lost. This form must be completed and sent to the Department of Labor and Industry, 29 East Front St., Trenton, N. J., at the start of the second work day

after the injury occurred. In case of a fatal or serious injury, the form must be completed and forwarded immediately.

The Department will no longer require the filing of Employer's Supplemental Report of Accident Form WC-1A, which heretofore was attached at the base of form WC-1.

II. Initial Report of Accident—Form WC-2 (2-58)

The revised form must be filed by self-insured employers or insurance carriers as soon as it is known that the disability exceeds 7 days or that permanent injury results.

The worker will not be required to sign Form WC-3 as was the practice heretofore. It will be noted that Question 18, Detailed X-ray Findings, and Question 19, Detailed Diagnosis of Physician, are required to be filed with the Division on Form 3, but will not appear on Form WC-5, the Employee Copy, Question 20(a), General X-ray Findings, and Question 21, General Diagnosis, will also be filed with the Division on Form 3 and in addition will appear on the Employee Copy, Form 5.

Insurance carriers and self-insured are required to supply their own forms. They may be obtained from a printer of their own choosing so long as the forms are identical in format, content, color and quality as the enclosed sample.

/s/ CARL HOLDERMAN,
Commissioner Department of Labor and Industry.

CH:P:s
Enc.

The above notice, filed in the Office of the Secretary of State of the State of New Jersey on July 25, 1958 is supplement to the present rules and regulations of the Department of Labor and Industry and the Division of Workmen's Compensation. The rule is effective October 1, 1958.

5. The defendant amended the aforesaid supplement by filing with the Office of the Secretary of State, on October 15, 1958, the following instrument:

(SEAL)

STATE OF NEW JERSEY
DEPARTMENT OF LABOR AND INDUSTRY
CARL HOLDERMAN, COMMISSIONER
20 West Front Street
Trenton 25, New Jersey

Please reply to writer at this address:

October 15, 1958

The regulation dated and filed by me in the Office of the Secretary of State on July 25, 1958, with an effective date of October 1, 1958, is hereby amended as follows:

1. The words "ALL EMPLOYERS", shall be inserted immediately after "To:" in the heading of the Notice.

2. The designation "Form WC-1 (10-58)" shall be inserted in lieu of "Form WC-1 (5-56)" where the latter appears in the heading of Paragraph I of the

Notice and in the forms attached thereto which constitute a part of the regulation.

3. In Paragraph I of the Notice the words "each employer" shall be inserted in lieu of the words "self-insured employers or insurance carriers".

This amendant shall take effect immediately.

/s/ CARL HOLDERMAN
CARL HOLDERMAN, Commissioner
Department of Labor and Industry

6. Attached hereto and made a part hereof are the following forms, promulgated in accordance with the supplement and amendment set forth in paragraphs 4 and 5 above:

EXHIBIT A—WC-1 (10-58)—Employer's Report of Accidental Injury.

EXHIBIT B—WC-2 (2-58)—Initial Report of Accident.

EXHIBIT C—WC-2A (2-58)—Statement of Wages and Agreement to Care for Case.

EXHIBIT D—WC-3 (2-58)—Final Report of Accident.

EXHIBIT I—WC-4 (2-58)—Final Report of Accident.

EXHIBIT F—WC-5 (2-58)—Final Report of Accident.

EXHIBIT G—WC-6 (2-58)—Final Report of Accident.

Amended Petition for Declaratory Judgment—Esso Standard Oil Co., Bethlehem Steel Company, et als.

7. Plaintiffs allege that the amendments to the rules and regulations of the Department of Labor and Industry and the Division of Workmen's Compensation, promulgated as set forth in paragraphs 4 and 5 above, are illegal and void for the following reasons:

(a) Said amendments purport to require self-insured employers to file with the Division of Workmen's Compensation, Department of Labor and Industry, on Exhibit A, reports of all accidental injuries to employees which shall cause a loss of time from regular duties beyond the working day or shift, on which the accident occured, or which shall require medical treatment beyond ordinary first aid, or more than two treatments by a physician, and all occurrences of occupational disease, whether or not time is lost. The aforesaid requirements are contrary to the provisions of R. S. 34:15-97, which require such reports only for accidents or compensable occupational diseases causing a disability extending beyond the waiting period (specified to be seven days by R. S. 34:15-14 (1945)) or causing any permanent injury. The aforesaid statute limits the power of the Department of Labor and Industry to promulgate rules and regulations and defines the obligations of self-insured employers with respect to the reporting of accidental injuries. The exceeding of such limitations and the extension of such obligations by administrative rule constitutes an illegal assumption of legislative authority by the Commissioner of Labor and Industry, in violation of such statute and otherwise.

(b) Said amendments purport to require the aforesaid reports to be made within two days after an injury occurs, or to be forwarded immediately in the case of a "fatal or serious injury". The aforesaid requirements are contrary

to the provisions of R. S. 34:15-97, which require the submission of reports only upon the expiration of the seven day waiting period or immediately upon the employer's having knowledge of a permanent injury. The aforesaid statute limits the power of the Department of Labor and Industry and defines the obligations of self-insured employers with respect to the time within which accident reports are to be prepared and submitted. The exceeding of such limitations and the extension of such obligations by administrative rule constitutes an illegal assumption of legislative authority by the Commissioner of Labor and Industry, in violation of such statute and otherwise.

(c) Said amendments purport to require self-insured employers to file with the Division of Workmen's Compensation, Department of Labor and Industry, on Exhibit D, a final report of accident, which is to contain medical X-ray findings, a general diagnosis of the injury and other medical information. The aforesaid requirements are contrary to the provisions of R. S. 34:15-97 to the extent that they require information beyond the length of disability and the nature and extent of permanent injury. The aforesaid statute limits the power of the Department of Labor and Industry and defines the obligations of self-insured employers with respect to the submission of medical information in reports of accidents. The exceeding of such limitations and the extension of such obligations by administrative rule constitutes an illegal assumption of legislative authority by the Commissioner of Labor and Industry, in violation of such statute or otherwise.

(d) Said amendments purport to require self-insured employers to prepare on Exhibit F a copy of the final report of accident, referred to in subparagraph (c) above, including general X-ray findings and general diagnosis, to

be furnished to the employee. The aforesaid requirements are contrary to the provisions of R. S. 34:15-97 to the extent that they require information beyond the length of disability and the nature and extent of permanent injury, and to the extent that they require the furnishing of reports to others than the Division of Workmen's Compensation of the Department of Labor and Industry. The aforesaid statute limits the power of the Department of Labor and Industry and defines the obligations of employers with respect to the submission of medical reports. The exceeding of such limitations and the extension of such obligations by administrative rule constitutes an illegal assumption of legislative authority by the Commissioner of Labor and Industry, in violation of such statute and otherwise.

(o) Said amendments purport to require self-insured employers to supply, at their own expense, the forms for the reports which are to be submitted to the Division of Workmen's Compensation, Department of Labor and Industry. The aforesaid requirement is contrary to the provisions of R. S. 34:15-97, which requires that such forms be furnished to self-insured employers by the Division of Workmen's Compensation. The aforesaid statute places the obligation of acquiring forms upon the Division of Workmen's Compensation of the Department of Labor and Industry, and the attempt to impose this obligation upon self-insured employers by administrative rule constitutes an illegal assumption of legislative authority, by the Commissioner of Labor and Industry, in violation of such statute and otherwise.

8. Plaintiffs further allege that to the extent said amendments purport to require self-insured employers to prepare on Exhibit F a copy of the final report of accident,

including general X-ray findings and general diagonis, to be furnished to the injured employee, such amendments are contrary to law and public policy in that the same will require the disclosure of information specifically prohibited by statute, R. S. 26:4-41 (1945) in particular, and will require the furnishing of information to the employee without regard to his own best interests.

9. Plaintiffs further allege that to the extent said amendments purport to require self-insured employers to prepare on Exhibit F a copy of the final report of accident, including general X-ray findings and general diagnosis, to be furnished to the injured employee, such amendments are calculated to and will have the effect of promoting workmen's compensation claims and litigation, thereby placing an undue burden upon the facilities of the Division of Workmen's Compensation and the Courts of this State and requiring the adjudication of claims made without regard to the legal obligation of the self-insured employers to make payments to compensation.

10. Plaintiffs further allege that said amendments and the forms promulgated in connection therewith and attached hereto as Exhibits A to G, inclusive, are so ambiguous, confusing and contradictory, as to render compliance with the purported requirements thereof impossible.

11. Plaintiffs further allege that said amendments to the rules are not necessary to carry out the purpose of the workmen's compensation statutes as required by R. S. 34:15-102 and are therefore illegal and void.

12. Plaintiffs further allege that said amendments are arbitrary, unreasonable, capricious, discriminatory and

oppressive and are therefore illegal and void and contrary to the provisions of the constitutions of the United States and of the State of New Jersey.

13. Plaintiffs further allege that to the extent Title 34 of the Revised Statutes of the State of New Jersey permits the valid promulgation of said amendments, said statutes are contrary to the provisions of the constitutions of the United States and of the State of New Jersey.

Wherefore, plaintiffs respectfully pray:

(1) That this Court adjudge that the purported amendments to the rules of the defendant, set forth in paragraphs 4 and 5 above, exceed the power of the Commissioner and the State Department of Labor and Industry, and are illegal and void.

(2) That the defendant be permanently enjoined from the promulgation and enforcement of such amendments, and

(3)That the petitioners have such other and further relief in the premises as may be just and proper.

WHARTON, STEWART & DAVIS
By JOHN W. FRITZ,
The Partner Acting for the Firm,
Attorneys for Petitioners,
50 West Main Street,
Somerville, New Jersey.

Form L & I-1 (7-60) (Employer's First Report of Accidental Injury or Occupational Disease)

(Opposite) ☛

FORM L & I-1 (7-60)

STATE OF NEW JERSEY

EMPLOYER'S FIRST REPORT OF ACCIDENTAL INJURY OR OCCUPATIONAL DISEASE

This form (in triplicate) must be completed in the following cases only: (1) For every accidental injury which shall cause a loss of time from regular duties beyond the working day or shift on which the accident occurred, or (2) which shall require medical treatment beyond ordinary first-aid, or (3) for the occurrence of an occupational disease whether or not time is lost. Complete this form in accordance with the instructions on the back of this sheet—mail it as promptly as possible, in all cases NO LATER THAN THE START OF THE SECOND (2nd) WORK DAY AFTER INJURY OCCURRED. In case of a fatal or serious injury (one that requires hospitalization) complete and mail this form immediately. PLEASE NOTIFY THE BUREAU OF ENGINEERING AND SAFETY BY TELEPHONE OR TELEGRAM IN CASE OF A FATAL OR SERIOUS INJURY (TRENTON - EX 2-2131; NEWARK - MA 4-1414)

MAIL ORIGINAL (WHITE) TO:

MAIL DUPLICATE (YELLOW) TO:

DEPARTMENT OF LABOR AND INDUSTRY
Bureau of Engineering and Safety
29 East Front Street
Trenton 25, New Jersey

FOR INS CO USE ONLY
Claim No
Class No
Policy No
Policy date
STATE USE ONLY
Screened
Coded
Referred For Investigation
Filed

See detailed instructions on reverse side

RETAIN BLUE COPY FOR YOUR RECORDS — **PLEASE PRINT OR TYPE**

1. Full name of employee (See reverse)

2. Was employee unable to work because of injury or disease on any day after injury including Sunday or any day on which he would not usually work? YES NO

3. Employee's address — City — Zone — County

4. Occupation or job title

5. Was employee working in job title when injured? YES NO

6. Age

7. Sex

8. Employer (company name)

9. Unemp Comp Acct No (See reverse)

10. Employer's address — City — Zone — State

11. Nature of business (list type, principal product or services) (See reverse)

12. No. of employees (All classes)

13. Place of accident or exposure. (See reverse)

14. Date of Accident or Disease — Mo | Day | Yr | Time AM PM

15. Describe nature of injury and parts of body affected. (See reverse)

16. Name the object, machine, tool or substance which directly injured the employee. (See reverse)

17. How did the accident occur? (See reverse)

18. Hazardous condition—identify the hazardous physical condition or circumstance which permitted or occasioned the accident. (See reverse)

19. Agency of the accident—identify the object, substance or premises in or about which the previously named hazardous condition existed. (See reverse)

20. Unsafe act—identify the violation of a commonly accepted safe procedure which directly permitted or occasioned the accident if any. (See reverse)

MAIL DUPLICATE (YELLOW) TO:

Policy No

Policy date

STATE USE ONLY

Screened

See detailed instructions on reverse side

RETAIN BLUE COPY FOR YOUR RECORDS

PLEASE PRINT OR TYPE

Coded

Referred For Investigation

Filed

1. Full name of employee (See reverse)

2. Was employee unable to work because of injury or disease on any day after injury including Sunday or any day on which he would not usually work? YES NO

3. Employee's address — City — Zone — County

4. Occupation or job title

5. Was employee working in job title when injured? YES NO

6. Age

7. Sex

8. Employer (company name)

9. Unemp. Comp. Acct. No. (See reverse)

10. Employer's address — City — Zone — State

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15. Describe nature of injury and parts of body affected. (See reverse)

16. Name the object, machine, tool or substance which directly injured the employee. (See reverse)

17. How did the accident occur? (See reverse)

18. Hazardous condition—identify the hazardous physical condition or circumstance which permitted or occasioned the accident. (See reverse)

19. Agency of the accident—identify the object, substance or premises in or about which the previously named hazardous condition existed. (See reverse)

20. Unsafe act—identify the violation of a commonly accepted safe procedure which directly permitted or occasioned the accident if any. (See reverse)

21

22. Did employee die? If yes, give date — Mo | Day | Yr

23. Name of attending doctor, if any — Address

24. Name of hospital — Address

Put 21 last.

3560-915-2301

PROOF OF PARTS: 1, 2, 3

DATE REPORT MADE 8½ x 11¾

BY _____
SIGNATURE OF PERSON PREPARING THIS FORM

TITLE _____

INSTRUCTIONS

Please complete all questions on this form in accordance with the directions below. On the basis of your answers the State of New Jersey is able to collect accident information for use in the Accident Reduction Programs of the Department of Labor and Industry. Questions 15 through 20 are for the purpose of accident cause analysis and are based upon the **American Standard Method of Recording Basic Facts Relating to the Nature and Occurrence of Work Injuries-Z16.2,** (Proposed Revision). Your cooperation in completing these questions fully is earnestly solicited. If the form is improperly completed it will be returned for correction.

Question No.

1. Give full name of employee as carried on payroll records.

9. Unemployment Compensation Account Number. This is the identification number used by the employer in paying his unemployment compensation tax for the location where the injured person is employed. The Account Number and the Standard Industrial Classification Code (S. I. C.) can be obtained from your copy of Quarterly Report of Wages (Form U. C. 27 B). The Account Number is on the 5th line of the address. The S. I. C. is the four digit number in the lower right hand corner of the address under the Account Number.

11. Nature of business. Describe the kind of business carried on at the location where the injured person is employed, i. e., manufacturing, wholesale, retail, construction, public utility, etc., and list the principal products manufactured, lines of trade, specific services or other activities. For example: manufacturing shoes, retailing men's clothes, trucking for hire, etc.

13. Place of accident or exposure. If the location of accident or exposure is different from the address shown on line 11, give sufficient information to pinpoint location by giving address, city, county, route or job location.

THE INSTRUCTIONS TO QUESTIONS 15 THROUGH 20 ARE INTENDED ONLY TO INDICATE THE TYPE OF ANSWER AND NOT THE LENGTH OF THE ANSWER. THE ANSWER SHOULD BE IN DETAIL.

15. Name the injury in terms of its principal physical characteristic and the part or parts of the body affected by the injury. For example: Amputation of right index finger; fracture of ribs; burn of right hand; contusions of leg; lacerations of both knees; multiple injuries; etc. Example of occupational disease; dermatitis of right arm; silicosis; etc.

16. Name the object, machine, tool, substance or bodily motion which directly injured the employee. This has reference to the source of injury. For example: The machine or object he struck against or which struck him; the vapor or poison he inhaled or swallowed; the thing he was lifting, pushing or pulling, etc. For example: If his injury was a steam burn inflicted by steam escaping from a broken connection in a high-pressure steam line, name the steam as the thing which produced the injury.

17. This question, (accident type classification) is directly related to the source of the injury named above and explains how that source of the injury produced the injury. For example: struck against machine; struck by falling brick; fell to different level; fell and struck head on floor; finger caught in machine; etc. Describe incident fully.

18. This refers **strictly** to the hazardous characteristics of objects and substances or of the environment, not to the characteristics of persons.

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18. This refers **strictly** to the hazardous characteristics of objects and substances or of the environment, not to the characteristics of persons. For example: defects of tools, machinery, etc.; dress or apparel hazards; environmental hazards, such as oil on floor, dust in air, etc.; hazardous methods or procedures; inadequate guarding, etc. Describe fully. Do not omit a hazardous condition merely because that condition resulted from an unsafe action or violation of orders or instructions or because no effective method of eliminating the hazard is known or recognized as feasible.

19. Name the object, substance or premises which either produced or contained the previously named hazardous condition. When the hazardous condition classification has been designated as "None" or "Undetermined" the agency shall be similarly designated.

20. Name the unsafe personal action which directly caused or permitted the occurrence of the previously designated accident type (Question 17) whether committed by the injured or another. In general, a personal action should be designated as unsafe only when there was a reasonable and less hazardous procedure which could have been followed. Describe fully.